

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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APR 15 1996

In the Matter of

AMENDMENT OF PART 20 AND 24 OF THE
COMMISSION'S RULES -- BROADBAND
PCS COMPETITIVE BIDDING AND THE
COMMERCIAL MOBILE RADIO SERVICE
SPECTRUM CAP

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) WT Docket No. 96-59
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AMENDMENT OF THE COMMISSION'S
CELLULAR PCS CROSS-OWNERSHIP RULE

) GN Docket No. 90-314
)

To: The Commission

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**COMMENTS OF COALITION OF
NEW YORK RURAL TELEPHONE COMPANIES**

Coalition of New York Rural Telephone Companies ("Coalition"), by its attorneys, hereby submits comments in the above-captioned matter in response to a Notice of Proposed Rule Making released by the Commission on March 20, 1996 (FCC 96-119) (hereafter the "NPRM").^{1/} By these comments, the Coalition urges the Commission to adopt rules most likely to achieve all of the goals established by Congress when auction authority was granted to the Commission.

Introduction

1. Experience with PCS auctions to date indicates that while fund-raising expectations have been met, or exceeded as is the case with the PCS C-Block auction, small businesses including rural

^{1/} The Coalition members are listed at Attachment A to these Comments. Each member of the Coalition is a "Rural Telephone Company" as that term is defined in Section 1.2110(b)(3) of the Commission's rules.

telephone companies, women and members of minority groups, generally have not fared well in their attempts to obtain PCS licenses. The lesson learned from the C-Block auction is that, to be successful in future PCS auctions if there are no new eligibility limitations, a designated entity ("DE") must be fortunate enough to be included in a new business venture with large companies willing to provide virtually unlimited sources of financing to secure licenses. Coalition members believe that the Commission should modify the eligibility rules for the F-Block licenses, and allow only small businesses to apply for and hold such licenses, for at least a three-year period. In these comments, the Coalition recommends several rule changes to promote opportunities for DEs in furtherance of clearly articulated Congressional and Commission intent

**Eligibility for F-Block PCS Licenses Should be
Limited to Qualified Small Business Entities**

2. Congress conferred auction authority upon the Commission with concerns about the opportunities of DEs to "...participate in the provision of spectrum-based services" such as broadband PCS.^{2/} The Commission was directed to consider the use of tax certificates, bidding preferences, and other procedures to accomplish a Congressional intention to foster DE ownership of new telecommunications facilities.

^{2/} See, Section 309(j)(4)(D) of the Communications Act.

3. Congress did not intend that DEs should be relegated to trophy positions in new business ventures that are financed by large companies, or that DEs should be excluded from PCS facilities ownership if not chosen by large companies as DEs "friendly" to large company interests in the formation of a new applicant. The Commission's C-Block eligibility rules largely resulted in convoluted applicant ownership structures, with DEs nominally in control, but with financing, equipment and a variety of other services supplied by multinational companies. It requires little reading in the trade press to understand how notable C-Block applicants with successful bids in the auction obtained the resources they obtained in order to bid hundreds of millions of dollars for the licenses.

4. Possibly the primary reason the Commission allowed large companies to own major interests in C-Block applicants was to provide access to capital to construct systems and compete with other wireless services providers.^{3/} Whatever the merits of that reasoning for C-Block licensing the same reasoning should not pervade the F-Block eligibility rules. What remains of the broadband PCS licenses, after 90 MHz of spectrum has been licensed in three 30 MHz blocks, are three separate 10 MHz licenses for the

^{3/} See, for example, the Fifth Report and Order in PP Docket No. 93-253, released July 15, 1994, at paras. 10-11.

493 Basic Trading Areas ("BTAs").^{4/} For these last slices of PCS spectrum, DEs are left to compete with 30 MHz PCS auction winners and cellular licensees who desire more spectrum, as well as with all other companies with an interest in PCS licenses. Some of the competitors view 10 MHz PCS as a means to supplement another service, while others including many DEs view 10 MHz PCS as a means to offer niche market services. Head-to-head competition for the same commercial market is not likely between a 10 MHz licensee which holds no other Commercial Mobile Radio Services spectrum and established cellular or 30 MHz PCS licensees. The Commission itself has distinguished 10 MHz from 30 MHz PCS in the adoption of different "build-out" requirements for these licenses.^{5/}

5. The Coalition respectfully urges the Commission not to allow the C-Block eligibility standards to remain in place for F-Block licenses. If the Commission desires to provide preferential

^{4/} The BTAs are the smallest areas made available by the FCC for PCS licensing purposes. One approach to making available more opportunities to DEs would be to allow F-Block licenses to be auctioned for smaller geographic areas, such as counties, if interested parties file an expression of interest by a certain date in a portion of a BTA.

^{5/} A 30 MHz PCS licensee is obligated to serve with a signal level sufficient to provide adequate service to at least one-third of the population in their licensed area within 5 years, and two-thirds of the population in their licensed area within 10 years of being licensed. Compare the substantially lesser burden placed upon 10 MHz PCS licensees who need only to provide a sufficient signal level to at least one-quarter of the population in their licensed area within 5 years, with no further construction requirement. See, Sections 24.203(a) and (b) of the Commission's rules

opportunities for C-Block winners in the 10 MHz auction, and the Coalition does not necessarily oppose such a plan, such opportunities can be conferred for D-Block and E-Block PCS licenses. Most importantly, the F-Block should be reserved for DEs in the form of small businesses, or possibly small businesses and rural telephone companies provided that the definition of a rural telephone company is unchanged from the definition now stated in Section 1.2110(b)(3) of the Rules.⁶ Only if the F-Block is reserved for DEs will DEs have the opportunities Congress intended when auction authority was granted to the Commission. Any less protection afforded to the interests of DEs will relegate most of the qualified and capable DEs to a role of reseller or marketer of new services provided by multinational companies.

**F-Block Auction Benefits For DEs Should Be
No Less Than Benefits Made Available In The C-Block Auction**

6. The NPRM included inquiries on whether benefits made available to C-Block auction winners should be offered in lesser forms to F-Block auction winners. The Consortium believes that the continuance of discounted upfront payments, bidding credits and installment payments, on terms no less favorable than those offered to C-Block winners, are appropriate and best assure the realization of Congress' purpose in recognition of DE needs in the auction process.

^{6/} A three-year holding period before license transfers are permitted would appear to be a reasonable requirement under the circumstances.

7. Upfront payments serve the Commission's purpose of screening insincere and incapable applicants from the auction. Such action appears necessary to minimize the chance of delay in completion of the licensing process and collection of auction proceeds. Unfortunately, the Commission's needs in this regard are at odds with the interests of applicants which have other opportunities and needs for investment of capital during the pendency of the auction. If the U.S. Treasury paid interest on deposited funds, the imposition upon bidders would be lessened. In any case, the burden upon DEs of lost use of capital is significant, and the Commission, for the F-Block auction, should not lessen the discount in upfront payments that was offered to C-Block applicants. Likewise, bidding credits and installment payment terms should not be changed for the F-Block auction. Small businesses and other DEs need the benefits not only to pay for the licenses, but to avoid inequities through the terms offered to C-Block and F-Block auction winners.

**The Definition Of Rural Telephone
Company Should Not Be Changed**

8. The NPRM invited comments on whether the definition of "rural telephone company" should be changed to conform with the definition of the same term in the Telecommunications Act of 1996 ("Telecom Act").^{2/} The Coalition opposes a change in the definition of rural telephone company as the term is used in

^{2/} NPRM, para. 52.

Section 1.2110(b)(3) of the Commission's Rules, and believes that Congress did not intend to effectuate or to compel such a change.

9. All of the defined terms in the Telecom Act confer meaning in the use of such terms in the Telecom Act. It is unnecessary and inappropriate to assign the same meaning to a given term when used in other contexts. The purpose of the definition in the FCC auction rules is to identify entities entitled to DE benefits. If the definition of rural telephone company included in the Telecom Act is substituted for the definition now in the Commission's auction rules, companies of a different type and size will be entitled to DE benefits.^{8/} The definition of a rural telephone company now in the Commission's rules would exclude large-capitalization companies with predominantly rural area properties from qualification as a DE. The present definition appears more appropriate in view of the intent to offer DE benefits to persons and companies most in need of financial help to obtain licenses.

^{8/} The fact that rural telephone companies obtain no payment benefits in the broadband PCS auctions under current rules is irrelevant to a consideration of how the term should be defined in the auction rules. If the definition is changed, there may be auctions for other spectrum where the type of applicant classifiable as a rural telephone company would be affected.

Conclusion

10. Meaningful opportunities for Designated Entities in the F-Block auction will be available only if the Commission limits the eligibility for such licenses to DEs. Out of 120 MHz of PCS spectrum to be licensed, it does not seem unreasonable to request that the Commission reserve one 10 MHz license solely for DEs. The DEs were identified by Congress as groups in need of special procedures in auctions to assure their participation in ownership of new telecommunications facilities

11. Experience with the C-Block auction shows that the eligibility rules for C-Block licenses invited the largest multinational companies to select trophy DEs and, through carefully crafted agreements, the large companies could benefit through ownership as well as through services contracts from the opportunities and benefits intended to assist the DEs. There is a sufficient basis to distinguish the F-Block from the C-Block in the needs of auction winners for operating capital. In any case, C-Block winners and losers can be afforded benefits in the D-Block and E-Block auction if the Commission concludes that benefits are appropriate for companies that are structured to comply with the C-Block rules.

12. Whatever DE auction benefits are made available for F-Block winners should be no less generous than the benefits made available to C-Block auction winners. The benefits of discounted

upfront payments, bidding credits and installment payments for F-Block winners are especially important to small businesses who must preserve capital for operational purposes. The levels of such benefits should not be diminished for the F-Block.

13. The definition of a "Rural Telephone Company" need not, and should not, be changed with regard to the participation of such companies in FCC auctions as DEs. Congress defined the term for other purposes in the Telecom Act, and there is a possibility that large companies with geographically diverse rural area properties would qualify for DE benefits if the definition of a rural telephone company is changed to conform with the Telecom Act definition. The definition of a rural telephone company in Section 1.2110(b)(3) of the Commission's rules is not limited to the PCS auctions, and there may be other spectrum auctions in the future for which rural telephone companies without large company resources may be in need of DE benefits and where the same benefits if provided to large companies would place small and rural telephone companies at a disadvantage in the auction.

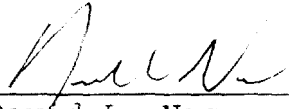
14. As described in these Comments, the Coalition members and other Designated Entities will be critically disadvantaged in the Commission's forthcoming F-Block PCS auction unless Commission rules are adopted which limit eligibility for the F-Block and which

preserve substantial benefits for DEs in the payment process.

Respectfully submitted,

**COALITION OF NEW YORK
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MARGARETVILLE TELEPHONE CO., INC.
MIDDLEBURGH TELEPHONE COMPANY
NEWPORT TELEPHONE COMPANY INC.
NICHOLVILLE TELEPHONE COMPANY
ONTARIO TELEPHONE COMPANY
PATTERSONVILLE TELEPHONE COMPANY
STATE TELEPHONE CORPORATION
TACONIC TELEPHONE CORPORATION
TOWNSHIP TELEPHONE COMPANY
TRUMANSBURG HOME TELEPHONE CO.

CERTIFICATE OF SERVICE

I, Loren Costantino, a secretary in the law office of Lukas, McGowan, Nace & Gutierrez, hereby certify that I have, on this 15th day of April, 1996, had a copy of the foregoing Comments of Coalition of New York Rural Telephone Companies hand-delivered to the following:

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